

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WILLIAM MCGHEE,

Plaintiff,

v.

CIV-04-0239 MV/LAM

JOE WILLIAMS, et al.,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION (*Doc. 319*)**

THIS MATTER is before the Court on Magistrate Judge Lourdes A. Martínez' Proposed Findings and Recommended Disposition (hereinafter "PF&RD") (*Doc. 319*), filed on February 19, 2010. Neither Plaintiff nor Defendants have filed objections to the PF&RD, and the deadline for doing so has passed. The Court has determined that it will adopt the PF&RD, with the exception of the amount of damages recommended therein, and will accordingly grant in part and deny in part Defendants' Motion for Summary Judgment (*Doc. 295*) and Plaintiff's Motion for Partial Summary Judgment (*Doc. 296*).

This Court agrees with the Magistrate Judge's finding that the restrictions placed on Plaintiff's possession of reading material pursuant to the 2001 Table of Services (CD-143002.A) and the 2003 Table of Services (CD-143002.A and CD-143002.B) did not violate Plaintiff's First Amendment rights and therefore Defendants are entitled to summary judgment in their favor as to Plaintiff's First Amendment claims.¹ This Court likewise agrees that the undisputed facts establish

¹ In so holding, this Court notes that even under the more restrictive 2001 Table of Services, which applies to Plaintiff's grievance regarding religious books, inmates were entitled to a minimum

that Plaintiff was denied exercise for 120 consecutive days and this denial violated Plaintiff's clearly established Eighth Amendment rights and thus Plaintiff is entitled to summary judgment as to his Eighth Amendment claim. This Court, however, finds that Plaintiff should be awarded \$1000.00 in compensatory damages for violation of his Eighth Amendment rights, as well as be awarded \$1.60 as reimbursement for his filing fee, as there is evidence, which is not refuted, that he suffered actual provable injury (*Doc. 298 at 15; Doc. 39, Ex. 3 at ¶¶ 80-83*). Finally, this Court holds that Plaintiff has not produced evidence sufficient to support a finding that his visitations with his wife were indefinitely suspended as necessary to support his Due Process claim and further finds that the undisputed evidence establishes that Plaintiff had notice of the suspension shortly after his wife's visits were suspended but elected not to grieve it at that time. Accordingly, Defendants are entitled to summary judgment in their favor as to Plaintiff's Due Process claim.

IT IS THEREFORE ORDERED that the Proposed Findings and Recommended Disposition (*Doc. 319*) are **ADOPTED** by the Court as modified above.

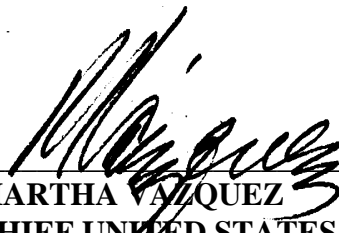
IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (*Doc. 295*) and Plaintiff's Motion for Partial Summary Judgment (*Doc. 296*) are **GRANTED in part** and **DENIED in part**. All claims against Defendant Prescott are dismissed with prejudice. Summary judgment is granted in favor of Plaintiff and against Defendants Perry, William and Bustos as to

of four books (one religious book and three library books, which could include religious texts available through the library), and that number of books increased at Steps 4 and 5 (as inmates in those steps were also entitled to an additional five personal books). Plaintiff has not alleged in this case that any particular religious text was unavailable to him, but instead has challenged only the quantity of books permitted. However, during the evidentiary hearing, when asked what religious texts he required, Plaintiff identified three books, less than the minimum number permitted (*Doc. 318 at 18-19*).

Plaintiff's Eighth Amendment claim, and in favor of Defendants and against Plaintiff as to Plaintiff's remaining claims.

IT IS FURTHER ORDERED that Plaintiff be awarded **\$1000.00 in compensatory damages** for his cruel and unusual punishment claim under the Eight Amendment, and **\$1.60 for his filing fee**.

DATED this 24th day of March, 2010.



MARTHA VALQUEZ
CHIEF UNITED STATES DISTRICT JUDGE